

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

**CASE NUMBER: 06-20185
HONORABLE VICTORIA A. ROBERTS**

v.

MARCUS LAMONT FREEMAN,

Defendant.

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ORDER

The Government filed a Motion in Limine to Exclude Admission of Irrelevant Audio Recordings (Doc. # 458). Marcus Lamont Freeman filed an Answer in Opposition to the Government's Motion (Doc. # 484). Roy West joined Freeman's Answer (9/22/10 Text Only Order).

In its motion, the Government states that Freeman intends to play 23 irrelevant audio recordings. However, attached as exhibits to the motion are transcripts of only 14 recordings, and there are 9 duplicate transcripts attached. In his answer, Freeman identifies only 13 recordings. The Court assumes that there are 14 audio recordings at issue for purposes of this motion.

The Government argues that these 14 conversations are irrelevant under Fed. R. Evid. 402. Freeman responds that the conversations are relevant to this theory of the defense, and that they provide explanations of Government evidence in line with that theory.

This Court must determine preliminary questions regarding the admissibility of

evidence. FED. R. EVID. 104 (a). Rule 104 places the burden of proof on the proponent of the evidence. *United States v. Mitchell*, 365 F.3d 215, 240 (3d Cir. 2004) (citing *Bourjaily v. United States*, 483 U.S. 171, 175 (1987)). Before this Court rules on the Government's motion, Freeman must show that this evidence has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." FED. R. EVID. 401. His conclusory assertion that the evidence relates to his case theory will not suffice. The Court **RESERVES ruling** on the Government's motion until Freeman lays a sufficient foundation at trial for the admission of this evidence.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: September 29, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on September 29, 2010.

s/Linda Vertriest
Deputy Clerk